

PART 740—LICENSE EXCEPTIONS

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SUPPLEMENT NO. 2 TO PART 740—ITEMS THAT MAY BE DONATED TO MEET BASIC HUMAN NEEDS UNDER THE HUMANITARIAN LICENSE EXCEPTION

SUPPLEMENT NO. 3 TO PART 740—LICENSE EXCEPTION ENC FAVORABLE TREATMENT COUNTRIES

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 7201 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 13, 2009, 74 FR 41325 (August 14, 2009).

§ 740.1 Introduction.

In this part, references to the EAR are references to 15 CFR chapter VII, subchapter C.

(a) *Scope.* A “License Exception” is an authorization contained in this part that allows you to export or reexport under stated conditions, items subject to the Export Administration Regulations (EAR) that would otherwise require a license under General Prohibition One, Two, Three, or Eight, as indicated under one or more of the Export

Control Classification Numbers (ECCNs) in the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR and items subject to the EAR that would require a license based on the embargo policies described in part 746 of the EAR. If your export or reexport is subject to General Prohibition Six for embargoed destinations, refer to part 746 of the EAR to determine the availability of any License Exceptions. Special commodity controls apply to short supply items. License Exceptions for items listed on the CCL as controlled for Short Supply reasons are found in part 754 of the EAR. If your export or reexport is subject to General Prohibition Five, consult part 744 of the EAR. If your export or reexport is subject to General Prohibitions Four, Seven, Nine, or Ten, then no License Exceptions apply.

(b) *Certification.* By using any of the License Exceptions you are certifying that the terms, provisions, and conditions for the use of the License Exception described in the EAR have been met. Please refer to part 758 of the EAR for clearance of shipments and documenting the use of License Exceptions.

(c) *License Exception symbols.* Each License Exception bears a three letter symbol that will be used for export clearance purposes (see paragraph (d) of this section).

(d) *Shipper’s Export Declaration or Automated Export System (AES) record.* You must enter on any required Shipper’s Export Declaration (SED) or Automated Export System (AES) record the correct License Exception symbol (*e.g.*, LVS, GBS, CIV) and the correct Export Control Classification Number (ECCN) (*e.g.*, 4A003, 5A002) for all shipments of items exported under a License Exception. Items temporarily in the United States meeting the provisions of License Exception TMP, under § 740.9(b)(3), are excepted from this requirement. See § 758.1 of the EAR for Shipper’s Export Declaration or Automated Export System (AES) requirements.

(e) *Destination Control Statement.* You may be required to enter an appropriate Destination Control Statement

on commercial documents in accordance with Destination Control Statement requirements of § 758.6 of the EAR.

(f) *Recordkeeping.* Records of transactions involving exports under any of the License Exceptions must be maintained in accordance with the record-keeping requirements of part 762 of the EAR.

[61 FR 12768, Mar. 25, 1996, as amended at 61 FR 64274, Dec. 4, 1996; 62 FR 25457, May 9, 1997; 65 FR 42568, July 10, 2000; 66 FR 36680, July 12, 2001; 66 FR 42109, Aug. 10, 2001; 68 FR 50472, Aug. 21, 2003]

§ 740.2 Restrictions on all License Exceptions.

(a) You may not use *any* License Exception if *any* one or more of the following apply:

(1) Your authorization to use a License Exception has been suspended or revoked, or your intended export does not qualify for a License Exception.

(2) The export or reexport is subject to one of the ten General Prohibitions, is not eligible for a License Exception, and has not been authorized by BIS.

(3) The item is primarily useful for surreptitious interception of wire, oral, or electronic communications, or related software, controlled under ECCNs 5A980 or 5D980, unless the item is consigned to and for the official use of an agency of the U.S. Government (see § 740.11(b)(2)(ii) of this part, Governments (GOV)).

(4) The item being exported or reexported is subject to the license requirements described in § 742.7 of the EAR and the export or reexport is not:

(i) Being made to Australia, Japan, New Zealand, or a NATO (North Atlantic Treaty Organization) member state (see NATO membership listing in § 772.1 of the EAR);

(ii) Authorized by § 740.11(b)(2)(ii) (official use by personnel and agencies of the U.S. government); or

(iii) Authorized by § 740.14(e) of the EAR (certain shotguns and shotgun shells for personal use).

(5)(i) The item is controlled for missile technology (MT) reasons, except that the items described in ECCNs 6A008, 7A001, 7A002, 7A004, 7A101, 7A102, 7A103, 7A104, 7B001, 7D001, 7D002, 7D003, 7D101, 7D102, 7E003, or 7E101, may be

exported as part of a manned aircraft, land vehicle or marine vehicle or in quantities appropriate for replacement parts for such applications under § 740.9(a)(2)(ii) (License Exception TMP for kits consisting of replacement parts), § 740.10 (License Exception RPL), § 740.13 (License Exception TSU), or § 740.15(c) (License Exception AVS for equipment and spare parts for permanent use on a vessel or aircraft).

(ii) MT controlled commodities described in ECCN 2A001 may be exported or reexported under § 740.9(a)(2)(ii) (License Exception TMP) or § 740.10 (License Exception RPL) as one-for-one replacement for equipment previously legally exported or reexported.

(6) The export or reexport is to a comprehensively embargoed destination (Cuba, Iran, and North Korea), unless a license exception or portion thereof is specifically listed in the license exceptions paragraph pertaining to a particular embargoed country in part 746 of the EAR.

(7) “*Space qualified*” items. Commodities defined in ECCNs 3A001.b.8 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6A002.e, 6A008.j.1, or 6A998.b; “software” for commodities defined in ECCNs 3A001.b.8 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6A002.e, 6A008.j.1, or 6A998.b and controlled under ECCNs 3D001 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6D001, 6D002, 6D991; and “technology” for commodities defined in ECCNs 3A001.b.8 (Traveling Wave Tube Amplifiers (TWTAs) exceeding 18 GHz), 6A002.e, 6A008.j.1, or 6A998.b and controlled under ECCNs 3E001, 6E001, 6E002, 6E101, 6E991.

(8) The item is controlled under ECCNs 2A983, 2D983 or 2E983 and the License Exception is other than:

(i) RPL, under the provisions of § 740.10, including § 740.10(a)(3)(v), which prohibits exports and reexports of replacement parts to countries in Country Group E:1 (see Supplement 1 to part 740));

(ii) GOV, restricted to eligibility under the provisions of § 740.11(b)(2)(ii) or (v); or

(iii) TSU, under the provisions of § 740.13(a) and (c).